

**आयकर अपीलीय अधिकरण, मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCHES 'I' MUMBAI**  
सर्वश्री आय.पी. बंसल, न्यायिक सदस्य / एवं  
**BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER /AND**

श्री राजेन्द्र, लेखा सदस्य  
**SHRI RAJENDRA, ACCOUNTANT MEMBER**  
आयकर अपील सं. / **ITA No.2955/MUM/2013**

**निर्धारण वर्ष /Assessment Year 2009-10**

IGL Gemstones Pvt. Ltd. 520/521 Parekh Market, 39, Kennedy Bridge, Opera House, Mumbai - 400 004.	<b>बनाम/</b> Vs.	The DCIT 5 (2), 5 <sup>th</sup> floor, Aaykar Bhavan, MK Raod, Mumbai 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCI 1908B		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Appellant by	Shri Deepak Tralshawalla
Respondent by	Shri Sachhidanand Dubey

सुनवाई की तारीख / **Date of Hearing** : **25/05/2015**

घोषणा की तारीख / **Date of Pronouncement** : **25/05/2015**

आदेश / ORDER

PER I.P.BANSAL, J.M:

This is an appeal filed by the assessee and it is directed against order passed by Ld. CIT(A)-9, Mumbai dated 06.03.2013 for assessment year 2009-10.

2. In the present case, assessee is contesting the levy of concealment penalty on the disallowance of a sum of Rs.6,06,879/- made under section 40(a)(ia) of the Income Tax Act, 1961 (the Act). On such disallowance penalty of Rs.1,87,525/- is imposed which has been confirmed by Ld. CIT(A). The assessee is aggrieved, hence, has filed this appeal.

3. It is the case of the Revenue that assessee was under an obligation to deduct tax under section 194C on the payments made by it to two firms namely M/s. Fezisons and M/s. Dwarkesh Enterprises, which concerns have done printing work for the assessee. The details of these works have been given in the table reproduced in para 5.4 of the order of Ld. CIT(A) and for the sake of brevity the same are not being reproduced. The assessee has made payments to M/s. Fezisons aggregating to a sum of Rs.3,35,808/- which includes payment made for art work for magazine & quality analysis report; visiting cards, quality analysis report of diamond/diamond jewellery; digital printouts; Digital printouts with sticker sheets; IGL Booklets; diamonds guides; tents made for exhibition; light performance report of the diamond; quality analysis report of diamond; copies of quality analysis report of diamonds; Files with new punch printed/reprinted files etc.

3.1 Similarly, payments have been made to M/s. Dwarkesh Enterprises aggregating to Rs.2,71,071/- , which includes payment made for jewellery design book;A4 size Certificate; A4 size terms and conditions; A4 size colour letterhead; I-Card for Delhi; diamond & diamond grading book; jewellery design book; Terms and conditions; cash credit voucher; Voucher book etc.

3.2 Thus, it has been held by AO that an aggregate sum of Rs.6,06,879/- was to be added to the income of the assessee under the provisions of section 40(a)(ia) of the Act as assessee did not deduct tax upon the aforementioned payments. The assessee did not contest this addition to the income.

4. It is the case of the assessee that all material got printed from aforementioned two concerns was with regard to material got by the assessee according to the requirement or specification and the material used by those concerns was also not purchased by those concerns from the assessee,

therefore, the action of non-deduction of tax was supported by the statutory provisions as per definition given in Explanation to section 194C under the head “work” exclude the procurement of goods which are as per requirement or specification of the customer by using material purchased from a person other than such customer. Thus, it is the case of Ld. AR that though assessee has accepted the addition, that fact ALONE cannot be utilized for confirming the concealment penalty as primarily the obligation of the assessee for deduction of tax does not exist. It is also the case of the assessee that, in any case, non-deduction of tax from the payments made to the aforementioned two concerns arises out of bonafide belief of the assessee that assessee is not under an obligation to deduct tax on such payments. It is also the case of the assessee that no material particulars have been concealed or no inaccurate particulars have been submitted so that concealment penalty could be levied upon the assessee. To support these proposition, Ld. AR has relied upon the decision of Delhi Benches of ITAT in the case of ITO vs. Kuber Khaini Pvt. Ltd., order dated 29/7/2011 passed in ITA No.155/Del/2011, copy of the said order was placed on our record and was also given to Ld. DR. In the said decision, considering the definition of work given in Explanation to section 194C it was held by Tribunal that if the payments are made for the manufacture or supply of products which are manufactured according to the requirements or specifications of the customer by using material purchased from a person other than such customer, then the assessee was not under an obligation to deduct the tax as payments made by the assessee would not fall within the ambit of “work” contract defined in section 194C of the Act.

4.1 It was also submitted BY Ld. AR that for the additions made under section 40(a) (ia), penalty could not be levied as per decision of Mumbai Tribunal in the case of Rushi Builders & Developers vs. ACIT decision dated 4/3/2015 passed in ITA No.6684/Mum/12, wherein similar proposition was accepted.

4.2 Thus, it was submitted by Ld. AR that Ld. CIT(A) has committed an error in confirming the concealment penalty which should be deleted.

5. On the other hand, Ld. DR relied upon the order passed by AO and Lid. CIT(A).

6. We have heard both the parties and their contentions have carefully been considered. Prima-facie, according to the provisions of section 194C r.w. definition given of "work" under the explanation to section 194C, the case of the assessee has to be accepted that assessee could be under bonafide belief for non-deduction of tax from the type of payments upon which it has been held that assessee is liable to deduct tax at source. Mere acceptance by the assessee of the addition does not make entitle the department to levy concealment penalty. In this case, is no allegation can be imposed upon the assessee to say that did not furnish all the particulars or it has disclosed inaccurate particulars so as to say that assessee is liable for concealment penalty. Keeping in view the entirety of facts and also reasonable belief of the assessee that it is not entitled for deduction of tax on the payments made to him by it as the same were excluded from the definition of "work" by the Explanation to section 194C, we are of the opinion that levy of concealment penalty in the present case is not justified and deserves to be deleted. Accordingly, the penalty is deleted and appeal filed by the assessee is allowed.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25/05/2015

आदेश की घोषणा खुले न्यायालय में दिनांक: 25/05/2015 को की गई।

Sd/-

(श्री राजेन्द्र, / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 25/05/2015

Sd/-

(आय.पी. बंसल / I.P. BANSAL)

न्यायिक सदस्य / JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

व.नि.स./Vm, Sr. PS